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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 CATHY ALATORRE

12 Plaintiff,

13 v.

14 RAYMOND E. MABUS, Secretary,
15 Department of the Navy,

16 Defendant.

Case No. 13cv1702-BAS (DHB)

**ORDER COMPELLING
COMPLIANCE WITH
SUBPOENA**

[ECF No. 41]

17 On February 19, 2015, Defendant filed an Application for Order to Show Cause
18 Regarding Subpoenaed Documents from Dr. Susan Trueblood. (ECF No. 41.) Defendant
19 argues Dr. Trueblood has failed to comply with a subpoena issued on November 10, 2014.
20 On March 6, 2015, Dr. Trueblood filed a response. (ECF No. 53.) Having reviewed the
21 parties' submissions and supporting exhibits, the Court hereby orders Dr. Trueblood to
22 comply with the subpoena, as outlined below.

23 **I. BACKGROUND**

24 On June 22, 2013, Plaintiff filed this action alleging claims for sexual harassment and
25 retaliation. (ECF No. 1.) In June 2014, Plaintiff testified at her deposition that she was
26 treated by Dr. Susan Trueblood for emotional distress related to the alleged sexual
27 harassment. (ECF No. 41-3 at 2-8.) Following Plaintiff's deposition, Defendant served a
28 subpoena on Dr. Trueblood seeking records relating to Plaintiff. (*Id.* at 10-15.) In response,

1 Dr. Trueblood produced progress notes, and a declaration indicating no documents had been
2 withheld. (*Id.* at 15; ECF No. 45.)

3 On July 18, 2014, Plaintiff designated Dr. Trueblood as a non-retained expert witness,
4 and indicated that Dr. Trueblood would testify about the contents of her medical records and
5 notes, and her counseling and treatment of Plaintiff. (ECF No. 41-3 at 18-24.) Thereafter,
6 on November 10, 2014, Defendant noticed the deposition of Dr. Trueblood. (*Id.* at 26-33.)
7 The November 10, 2014 deposition subpoena also requested documents from Dr. Trueblood
8 concerning her treatment of Plaintiff. (*Id.*) At her deposition, Dr. Trueblood produced
9 additional documents in response to the subpoena, including a Client Information Form dated
10 February 2012. (ECF No. 45.) Dr. Trueblood testified that she had not withheld any
11 responsive documents based upon privilege or any other ground. (ECF No. 41-3 at 41.)
12 When later questioned about the February 2012 Client Information Form, Dr. Trueblood
13 stated that it was actually created in the summer of 2014. (ECF No. 41-3 at 59-60.) Dr.
14 Trueblood admitted that Plaintiff's original Client Information Form Plaintiff was in another
15 file, which had not been produced. (*Id.* at 60.) Dr. Trueblood stated she did not produce the
16 original Client Information Form because it contained information regarding a second
17 patient, who had attended joint therapy sessions with Plaintiff. (*Id.*) Dr. Trueblood also
18 admitted that there were additional session notes from the conjoint sessions that had not been
19 produced. (*Id.* at 62.)

20 On February 19, 2015, Defendant filed the instant motion. Defendant argues Dr.
21 Trueblood failed to produce all documents responsive to the subpoena. Defendant contends
22 Dr. Trueblood waived any objections to the subpoena by not serving a timely objection, and
23 that it is too late for her to assert objections now, including an objection based on the
24 psychotherapist-patient privilege. In response, Dr. Trueblood states that at the time she
25 responded to the subpoena, she was not represented by counsel, and believed in good faith
26 that the conjoint session notes and original Client Information Form were beyond the scope
27 of the requests for production. She further argues that the withheld documents are protected
28 from disclosure by the other patient's psychotherapist-patient privilege, and the other patient

1 has not waived the privilege.

2 II. DISCUSSION

3 1. Legal Standards

4 Federal Rule of Civil Procedure 26(b) provides that “[p]arties may obtain discovery
5 regarding any nonprivileged matter that is relevant to any party’s claim or defense.” Fed.
6 R. Civ. P. 26(b)(1). The relevance standard is commonly recognized as one that is necessarily
7 broad in scope in order “to encompass any matter that bears on, or that reasonably could lead
8 to other matter that could bear on, any issue that is or may be in the case.” *Oppenheimer*
9 *Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978) (citing *Hickman v. Taylor*, 329 U.S. 495,
10 501 (1947)). Rule 45 governs subpoenas duces tecum for the production of documents that
11 are in the possession of persons who are not parties. Fed. R. Civ. P. 45. Subpoenas under
12 Rule 45 are subject to the relevance requirements set forth in Rule 26.

13 However broadly defined, relevancy is not without “ultimate and necessary
14 boundaries.” *Hickman*, 329 U.S. at 507. Rule 26 permits a court, for good cause, to “issue
15 an order to protect a party or person from annoyance, embarrassment, oppression, or undue
16 burden or expense, including one or more of the following: (A) forbidding the disclosure or
17 discovery; (B) specifying terms, including time and place for the disclosure or discovery;
18 [and] . . . (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or
19 discovery to certain matters.” Fed. R. Civ. P. 26(c)(1). *See also Societe Nationale*
20 *Industrielle Aerospatiale v. United States Dist. Ct. S. Dist. Iowa*, 482 U.S. 522, 566 (1987)
21 (stating under Rule 26, “[a] court may ‘make any order which justice requires’ to limit
22 discovery, including an order permitting discovery only on specified terms and conditions,
23 by a particular discovery method, or with limitation in scope to certain matters.”).

24 The psychotherapist-patient privilege is recognized under federal law. *Jaffe v.*
25 *Redmond*, 518 U.S. 1, 15 (1996) (holding “that confidential communications between a
26 licensed psychotherapist and her patients in the course of diagnosis or treatment are protected
27 from compelled disclosure under Rule 501 of the Federal Rules of Evidence.”). Like other
28 privileges, “the patient may of course waive the protection.” *Id.* at 15 n. 14. However,

1 *Jaffee* did not address all the contours of the privilege. *Id.* at 18.

2 2. Production of the Joint Session Notes and Original Client Information Form

3 First, the Court finds the withheld documents are responsive to Defendant's November
4 10, 2014 subpoena. The subpoena requested among other things: "[a]ll patient intake forms
5 relating to CATHY ALATORRE," "[a]ll documents relating to any group meeting,
6 appointments, and counseling/therapy sessions with CATHY ALATORRE," and "[a]ll
7 progress notes relating to any counseling/therapy session with CATHY ALATORRE."
8 (ECF No. 41-3 at 30-31.) Dr. Trueblood states that prior to providing individual therapy to
9 Plaintiff in early 2012, she saw Plaintiff and another individual for four (4) conjoint therapy
10 sessions. (ECF No. 53-1 at ¶ 3.) Dr. Trueblood testified that she has maintained the file
11 from the joint therapy, and it contains session notes from the conjoint sessions, as well as
12 Plaintiff's original Client Information Form. (ECF No. 41-3 at 60-62.) Because Plaintiff
13 participated in the conjoint sessions, the session notes are responsive to the requests for all
14 documents relating to "any counseling/therapy session" with Plaintiff, even if they also
15 contain information relating to the other individual.

16 With regard to the initial Client Information Form, Dr. Trueblood argues that other
17 than the backdated Client Information Form Plaintiff filled out in 2014, "[t]here is no other
18 Client Information Form completed in plaintiff's hand." (ECF No. 53 at 5.) Regardless of
19 whether Plaintiff, the other patient, or some other individual physically filled in the form, any
20 patient information form that was completed for the purpose of Plaintiff obtaining treatment
21 from Dr. Trueblood (whether for conjoint therapy or individual therapy) is related to
22 Plaintiff. Accordingly, the Court finds the original Client Information Form, that Dr.
23 Trueblood testified is in her files, is responsive to Defendant's subpoena.

24 Next, the Court finds that any confidential communications between Dr. Trueblood
25 and the other patient clearly fall within the ambit of the psychotherapist-patient privilege.
26 Defendant argues Dr. Trueblood has waived any objections, including an objection based on
27 the psychotherapist-patient privilege, by not serving a timely objection to the subpoena. The
28 Court has found no prior case addressing a situation analogous to the one presented here,

1 where it is argued the psychotherapist waived the privilege without the consent of the patient
2 by not asserting it in response to a subpoena. However, in recognition of the policy
3 considerations supporting the privilege, including the general recognition that the privilege
4 should be applied liberally in favor of the patient,¹ the Court declines to hold that Dr.
5 Trueblood waived the privilege under the facts and circumstances of this case.

6 Defendant further argues that Dr. Trueblood has interpreted the privilege too broadly
7 by refusing to disclose the identity of the other patient. Generally, “the identity of a patient
8 or the fact and time of his treatment does not fall within the scope of the psychotherapist-
9 patient privilege.” *In re Zuniga*, 714 F.2d 632, 640 (6th Cir.1983); . However, “[j]ust as the
10 recognition of privileges must be undertaken on a case-by-case basis, so too must the scope
11 of the privilege be considered.” *Id.* (citing *Upjohn Co. v. United States*, 449 U.S. 383, 396-97
12 (1981)). The appropriate scope of a privilege “is determined by balancing the interest
13 protected by shielding the evidence sought with those advanced by disclosure.” *Id.* at 639.
14 Here, the other patient is not a party to this action and has not placed his or her mental health
15 or psychiatric history in issue. Defendant has not made any showing that the identity of the
16 other patient, or the content of his or her communications with Dr. Trueblood are relevant.
17 As a result, in this case and under these circumstances, the Court finds that the identity of the
18 other patient is irrelevant and need not be disclosed to Defendant.

19 Nevertheless, the conjoint therapy notes and original Client Information Form likely
20 contain relevant information relating to Plaintiff. Therefore, the Court finds it is appropriate
21 to order production under a protective order. To the extent the documents contain
22 information relating to Plaintiff, the Court will order redacted copies of the documents to be
23 produced to Defendant. In order to assess whether the documents contain relevant
24 information relating to Plaintiff, and whether the documents can be appropriately redacted

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26 ¹ As recognized by the United States Supreme Court, the privilege is “rooted in the
27 imperative need for confidence and trust” and “the mere possibility of disclosure may
28 impede development of the confidential relationship necessary for successful treatment.”
Jaffe 518 U.S. at 10-11. *See also In re Lifschutz*, 2 Cal. 3d 415, 422 (Cal. 1970) (stating
that “a broad, protective psychotherapist-patient privilege” promotes “an environment of
confidentiality of treatment [that] is vitally important to the successful operation of
psychotherapy”).

to protect the confidentiality of the other patient, the Court will require Dr. Trueblood to produce the records to the Court for *in camera* review.

Accordingly, the Court directs Dr. Trueblood to provide two sets of the documents to the Court. One set shall contain complete, unredacted copies of the conjoint session notes and the original Client Information Form. On the second set, Dr. Trueblood shall redact the documents so that they do not reveal the name or any confidential communications of the other patient. However, any information related to Plaintiff is not to be redacted. Upon receipt of the foregoing, the Court will determine whether Dr. Trueblood's proposed redactions are appropriate and whether and to what extent the redacted documents should be produced to Defendant.

III. CONCLUSION

Based on the foregoing, **IT IS HEREBY ORDERED** as follows:

1. Dr. Trueblood is **ORDERED** to comply with the November 10, 2014 subpoena issued by Defendant. Dr. Trueblood shall produce redacted and unredacted copies of the conjoint session notes and original Client Information Form, as outlined above, directly to the Court for *in camera* review by **April 20, 2015**.
2. The documents may be submitted via mail to: Magistrate Judge Bartick's Chambers at the United States District Court for the Southern District of California, 333 West Broadway, Suite 1080, San Diego, CA, 92101; or via email to: efile_Bartick@casd.uscourts.gov.
3. Defendant shall serve a copy of this order on Dr. Trueblood no later than **April 9, 2015**.

IT IS SO ORDERED.

DATED: April 8, 2015


DAVID H. BARTICK
United States Magistrate Judge